

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of  
SEBASTIAN ENTERPRISES, INC., AND  
FORESTHILL TELEPHONE, CO. (U 1009 C)  
AND ROSE A. HOEPER, AS SOLE  
SHAREHOLDER OF FORESTHILL TELEPHONE  
CO., TO Authorize the Acquisition of Control of  
FORESTHILL TELEPHONE CO. by SEBASTIAN  
ENTERPRISES, INC. Thorough the Acquisition of  
the Stock of FORESTHILL TELEPHONE CO.  
from ROSE A. HOEPER.

Application 05-03-008  
(Filed March 8, 2005)

**OPINION GRANTING TRANSFER OF CONTROL****1. Summary**

This decision authorizes Rose A. Hoeper (Hoeper) to transfer control of Foresthill Telephone Company (Foresthill) to Sebastian Enterprises, Inc. (Sebastian). This transfer of control is to take place through the sale of 100% of the issued and outstanding capital stock of Foresthill by Hoeper to Sebastian, as more fully described in the application and exhibits attached to the application.

**2. The Parties**

Hoeper owns 100% of the issued and outstanding stock of Foresthill and assumed full control of Foresthill on September 5, 2002, pursuant to Decision (D.) 02-09-009. Prior to that date and the death of her husband, Ralph E. Hoeper, Mr. and Mrs. Hoeper jointly controlled Foresthill and held 100% of its stock as community property.

Foresthill, a California corporation, is a rural incumbent local exchange carrier that operates a single exchange in and around the town of Foresthill in Placer County under its corporate identification number U-1009-C. Its principal place of business is at 5915 Gold Street, Foresthill, California.

Sebastian, a California corporation, is a holding company located in Kerman, California. Its principal place of business is at 811 South Madera Avenue, Kerman, California. Sebastian, maintaining 3 to 7 debt to equity ratio and a 2 to 8 current liability to current asset ratio, is a parent company for its wholly owned subsidiaries Kerman Telephone Company (Kerman) and Kertel Communications, Inc. (Kertel).

Kerman is a rural incumbent local exchange carrier operating a single exchange in and around the town of Kerman in Fresno County under its corporate identification number U-1012-C.<sup>1</sup>

Kertel, located in Fresno, California, provides communications equipment and various communications services, primarily in Kerman and Fresno, California.

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<sup>1</sup> Under the control of the Sebastian Family since 1946, Kerman provides services to approximately 6,500 access lines through a combination of fiber and cable technologies. The Kerman network has extended fiber digital loop carrier (DLC) remotes to within 6,000 feet of its subscribers, invested in fiber facilities to its interconnection with the world and installed a Santara softswitch. This network has provided Kerman the ability to offer high speed digital services (such as DSL) up to 10 megabits to nearly 100% of its current customer base and provide ATM transmission to the world. The telecommunicating services offered by Kerman are comparable to every modern communications service being offered in America's largest cities.

**3. The Transaction**

On March 8, 2005, joint applicants Hoeper and Sebastian filed this application requesting approval of the transfer of control of Foresthill to Sebastian from Hoeper. This transfer of control is to take place pursuant to a December 23, 2004 Stock Purchase Agreement, a copy of which is attached to the application. Pursuant to that agreement, Hoeper will exchange her 100% of the issued and outstanding capital stock of Foresthill to Sebastian and a covenant by Hoeper not to compete in exchange for approximately \$14.5 million cash, subject to closing adjustments.

Sebastian seeks to acquire control of Foresthill to further its strategy of growing its business by acquiring additional telephone exchanges in California and continuing to improve service to its subscribers. In this regard, Sebastian intends to continue operating Foresthill as a wholly owned subsidiary of Sebastian. However Sebastian may take control of Foresthill through an intermediate subsidiary if deemed necessary or convenient to secure financing or for related reasons.

Sebastian intends to operate Foresthill as it exists and operates today. Sebastian will retain current employees, add personnel as necessary, and manage Foresthill with on-site management, as well as utilize the expertise and support of Sebastian's wholly owned subsidiary, Kerman.

This proposed transaction isn't scheduled to close until all of the conditions set forth in the Stock Purchase Agreement have been satisfied, including approval by this Commission.

The joint applicants state that the proposed transaction is in the public interest because it will enhance the opportunities for personal and professional development that joining the Sebastian family of companies offers to Foresthill's

employees; provide increased capability in providing quality telephone service, including broadband and vertical services, to the subscribers of Foresthill; and, continue the commitment of the Sebastian family of providing high quality telephone service to rural areas of California at affordable prices.

#### **4. Discussion**

Joint applicants seek approval of the proposed transfer of control pursuant to Pub. Util. Code § 854. Section 854(a) states, in relevant part, as follows:

No person or corporation...shall merge, acquire, or control...any public utility organized and doing business in this state without first securing authorization to do so from the commission...Any merger, acquisition, or control without that prior authorization shall be void and of no effect.

The Commission has broad discretion to determine if it is in the public interest to authorize a transaction pursuant to § 854(a).<sup>2</sup> The primary standard used by the Commission to determine if a transaction should be authorized under § 854(a) is whether the transaction will adversely affect the public interest.<sup>3</sup> The Commission may also consider if the transaction will serve the public interest.<sup>4</sup> Where necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.<sup>5</sup>

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<sup>2</sup> D.95-10-045, 1995 Cal. PUC LEXIS 901, \*18-19; and D.91-05-026, 40 CPUC 2d 159, 171.

<sup>3</sup> D.00-06-079, p. 13; D.00-06-057, p. 7; D.00-05-047, p. 11 and Conclusion of Law (COL) 2; D.00-05-023, p. 18; D.99-03-019, p. 14; D.98-08-068, p. 22; D.98-05-022, p. 17; D.97-07-060, 73 CPUC 2d 601, 609; D.70829, 65 CPUC 637, 637; and D.65634, 61 CPUC 160, 161.

<sup>4</sup> D.00-06-005, 2000 Cal. PUC LEXIS 281, \*4; D.99-04-066, p. 5; D.99-02-036, p. 9; D.97-06-066, 72 CPUC 2d 851, 861; D.95-10-045, 62 CPUC 2d 160, 167; D.94-01-041, 53

*Footnote continued on next page*

Joint applicants represent that it can be said with certainty that there is no possibility that this transaction may have any significant adverse effect on the environment because the transaction involves only a change in ownership of stock of Foresthill.

For the following reasons, we conclude that it is reasonable to grant this § 854(a) application. First, the Sebastian Family has a track record of financing and providing quality telecommunications services in a California rural community. Second, Foresthill will continue to operate as it has in the past using the same name and operating authority and all rights and obligations of Foresthill shall remain after the transaction is completed. Third, the public may benefit from the transfer of control to the extent the transaction enhances Foresthill's ability to maintain and expand its services and operations in California, including broadband and vertical services. Fourth, there is no opposition to this application. For these reasons, we see no reason to withhold authority for the transfer of control before us here.

## **5. Category and Need for Hearing**

In Resolution ALJ 176-3149, dated March 17, 2005, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we affirm that this is a ratesetting proceeding, and that hearings are not necessary.

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CPUC 2d 116, 119; D.93-04-019, 48 CPUC 2d 601, 603; D.86-03-090, 1986 Cal. PUC LEXIS 198 \*28 and COL 3; and D.8491, 19 CRC 199, 200.

<sup>5</sup> D.95-10-045, 62 CPUC 2d 160, 167-68; D.94-01-041, 53 CPUC 2d 116, 119; D.90-07-030, 1990 Cal. PUC LEXIS 612 \*5; D.89-07-016, 32 CPUC 2d 233, 242; D.86-03-090, 1986 Cal. PUC LEXIS 198 \*84-85 and COL 16; and D.3320, 10 CRC 56, 63.

**6. Ex Parte Relief**

Applicants have requested ex parte relief without a hearing, pursuant to Rule 15 (d) of the Commission's Rules of Practice and Procedure. This relief is requested on the basis that approval of the transfer of control will not result in any changes to Foresthill's rates, tariffs, or manner in which service is provided to California telephone subscribers. Ex parte relief should be granted on the basis that there is no indication that the transfer of control would be inconsistent with or adverse to the public interest.

**Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Therefore, the otherwise applicable 30-day period for public review and comment is being waived, pursuant to Pub. Util. Code § 311(g)(2).

**Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner and Michael J. Galvin is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. Foresthill possesses a CPCN to provide incumbent local exchange telecommunications services under the U-1009-C corporate identification number.
2. Joint applicants seek authority for Sebastian to acquire control of Foresthill through a transfer of 100% of the issued and outstanding capital stock of Foresthill for approximately \$14.5 million in cash.
3. The Sebastian Family has provided quality and modern telecommunications services in a California rural community since 1946.

4. Pub. Util. Code § 854(a) requires Commission authorization to transfer control of a public utility. Any transfer of control without Commission authorization is void under the statute.

5. Foresthill will continue offering its current services and using the same name and authority after the transfer of control.

6. There is no opposition to this application.

7. Sebastian has the technical, managerial, and financial qualifications necessary to exercise control of Foresthill.

### **Conclusions of Law**

1. This is a ratesetting proceeding and no hearing is necessary.

2. It can be seen with certainty that the proposed transfer will not have any adverse impact on the environment.

3. This application should be approved and become effective immediately because it is not adverse to the public interest and the public may benefit from Sebastian's ability to maintain and expand Foresthill's services and operations in California.

## **O R D E R**

### **IT IS ORDERED** that:

1. Rose A. Hoeper is authorized pursuant to Sections 851-844 of the Public Utilities Code to transfer 100% of the issued and outstanding capital stock of Foresthill Telephone Company (Foresthill) to Sebastian Enterprises, Inc. (Sebastian) for approximately \$14.5 million in cash, as more fully described in the application and exhibits attached to the application.

2. Foresthill shall continue to be responsible for prior and future claims, collected, uncollected fees and surcharges applicable to fund the Universal Lifeline Telephone Service, California Relay Service and Communications Devices Fund, Commission User Fees, California High Cost Funds, and the California Teleconnect Fund, including any fees and surcharges which Foresthill may not have yet collected.

3. Within 30 days after the change of control authorized herein has taken place, Foresthill shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of control.

4. The corporate identification number U-1009-C assigned to Foresthill shall continue to be used by Foresthill, which shall be included in all original filings with this Commission and in the titles of other pleadings filed in existing cases.

5. Sebastian and its affiliated companies which transact business with Foresthill shall, upon Commission staff request, make all books and records available for review and inspection.

6. The application is granted as set forth above and the authority granted shall expire if not exercised within one year of the effective date of this order.

7. Application 05-03-008 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.